

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ABBAS ABDOUSH,

Plaintiff,

Case No. 11-cv-15138

v.

HONORABLE STEPHEN J. MURPHY, III

PRISONER HEALTH SERVICES, et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION
(document no. 67), **GRANTING SECOND MOTION TO DISMISS**
(document no. 64), **DENYING AS MOOT MOTIONS TO DISMISS**
(document nos. 57, 59) **AND DISMISSING THE COMPLAINT WITH PREJUDICE**

On November 21, 2011, Plaintiff Abbas Abdoush filed a complaint against Defendants Prisoner Health Services (“PHS”), the Michigan Department of Corrections, and a number of medical doctors and staff, alleging he was denied adequate medical care after sustaining an eye injury. The Court referred all pre-trial proceedings to a United States magistrate judge for resolution or recommendation.

Currently before the Court are several motions to dismiss. Defendants PHS, Adam Edelman, and Harriet Squire filed their first motion seeking dismissal under Civil Rule 12(b)(6) for failure to state a claim, and subsequently filed a second motion—after Abdoush failed to file a responsive brief as ordered by the Court—seeking to dismiss the case under Civil Rule 41(b) for failure to prosecute. ECF Nos. 57, 64. Defendants Laura Kinder and Haresh Pandya also have a pending motion to dismiss. ECF No. 59.

On January 12, 2015, the magistrate judge issued a Report and Recommendation (“Report”), recommending the case be dismissed with prejudice. ECF No. 67. The Report applied the relevant Civil Rule 41(b) factors identified by the Sixth Circuit in *Schafer v. City*

of *Defiance Police Dep't*, 529 F.3d 731, 737 (6th Cir. 2008), and detailed the protracted litigation and chronic failures of Abdoush to prosecute the case. Given Abdoush's habitual failure to comply with Local Rule 11.2—which requires filing changes of address with the Court—the Report advised finding Abdoush at fault for the extended failure to prosecute. Report 8, ECF No. 67. The Report explained Abdoush had been repeatedly warned of the consequences of these failures, and advised finding the Defendants prejudiced by the significant delays in the case. Accordingly, the Report advised holding that Abdoush's "repeated lapses in prosecution" warranted dismissal. *Id.* at 9.

Civil Rule 72(b) governs review of a magistrate judge's report and recommendation. De novo review of the magistrate judge's findings is only required if the parties "serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). Nevertheless, because a district judge always retains jurisdiction over a motion after referring it to a magistrate judge, he is entitled to review the magistrate judge's findings of fact and conclusions of law on his own initiative. *See Thomas v. Arn*, 474 U.S. 140, 154 (1985) (clarifying that while a district court judge need not review a report and recommendation "de novo if no objections are filed, it does not preclude further review by the district judge, sua sponte or at the request of a party, under a de novo or any other standard").

Because neither party filed objections to the Report, de novo review of the Report's conclusions is not required. Having reviewed the Report's analysis, in light of the record, the Court finds that its conclusions are factually based and legally sound. Accordingly, it will adopt the Report's findings and dismiss the complaint with prejudice.

ORDER

WHEREFORE, it is hereby **ORDERED** that the Report and Recommendation (document no. 67) is **ADOPTED**.

IT IS FURTHER ORDERED that the Second Motion to Dismiss (document no. 64) is **GRANTED**.

IT IS FURTHER ORDERED that the remaining Motions to Dismiss (document nos. 57, 59) are **DENIED AS MOOT**.

IT IS FURTHER ORDERED that the complaint is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: January 29, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on January 29, 2015, by electronic and/or ordinary mail.

s/Carol Cohron
Case Manager